IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10979 of 1993

with

CIVIL APPLICATION No 1044 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

R H PATEL

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Appearance:

1. Special Civil Application No. 10979 of 1993
   MR HARDIK C RAWAL for Petitioner No. 1
   MR JS BRAHMBHATT for Respondent No. 1
2. Civil Application No. 1044 of 1994
   MR JS BRAHMBHATT for Petitioner No. 1
   MR SN SHELAT for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 21/02/2002

ORAL JUDGEMENT

#. Heard Mr.Hardik C. Rawal, learned advocate appearing on behalf of the petitioner Corporation and Mr.J.S.Brambhatt, learned advocate appearing on behalf of the respondent workman.

#. In the present petition, the petitioner Corporation has challenged the award passed by the Labour Court, Godhara in Reference No.412 / 90 dated 16th June, 1993, wherein the Labour Court has granted reinstatement with continuity of service without backwages of interim period to the respondent work. Initially, this Court has issued notice on 4th November, 1993 and granted ad-interim relief staying implementation of the award. Thereafter, this Court has issued RULE on 5th September, 1994 and ad-interim relief granted on 4th November, 1993 was ordered to be confirmed till final hearing and final disposal of the present petition subject to condition that the petitioner shall pay to the respondent the wages last drawn paid to him until this matter is finally heard and disposed of.

#. Learned advocate Mr.Hardik Rawal appearing on behalf of the petitioner Corporation has made clear statement that in pursuance of the award, the respondent workman has been reinstated in service and at present he is working with the petitioner Corporation. This statement has been supported and confirmed by the learned advocate Mr.Brambhatt appearing on behalf of the respondent workman.

#. Learned advocate Mr.Rawal has vehemently submitted that this is a case of clear misappropriation by the respondent workman for reissuing tickets to the passengers. The labour court has come to the conclusion that charge levelled against the respondent workman is found to have been proved and finding recorded by the inquiry officer has been considered to be legal and valid but the Labour Court has only interfered on the ground that looking to the gravity of misconduct, punishment of dismissal is disproportionate and therefore, concluded that not to grant backwages for interim period will amount to be sufficient punishment to the respondent workman. Mr.Rawal, learned advocate has, therefore, submitted that in case of misappropriation, the labour court has no power to pass the order of reinstatement by exercising the powers under Section 11-A of the Industrial Disputes Act, 1947. However, alternatively Mr.Rawal, learned advocate for petitioner has suggested

that the Labour Court has merely denied backwages for which he is not legally entitled and therefore, in fact no punishment at all has been inflicted on the respondent workman. Therefore, the labour court should have applied his mind as to imposing of appropriate punishment considering serious misconduct committed by the respondent workman. It is submitted that when the respondent workman has not been awarded any penalty while granting reinstatement, therefore, this Court may exercise its inherent powers and impose some severe punishment on the respondent workman.

#. Learned advocate Mr.J.S.Brambhatt appearing on behalf of the respondent workman has submitted that the workman concerned has already been reinstated in service from 1993 and he has been working for more than eight years from the date of award. Therefore, if this Court will impose some minor punishment, will meet the ends of justice. Mr.Brambhatt, learned advocate for respondent workman has also submitted that the Apex Court while dealing with similar matter in case of GUJARAT STATE ROAD TRANSPORT CORPORATION V. U.A. MALEK reported in 2001 [1] LLJ pg.180 wherein reinstatement was granted by the labour Court and that order has already been implemented by the Corporation, has considered the fact that the workman has already been reinstated in service and since he is working more than seven to eight years, therefore, the reinstatement was not disturbed. However, the Apex Court has observed that when serious misconduct is found to have been proved against the workman concerned, in such situation, reinstatement granted to the workman concerned may not be disturbed but some punishment can be imposed by this Court.

#. I have considered the submissions made by the learned advocates for the parties. No doubt, before the Labour Court, the finding is that the charge levelled against the respondent workman is found to be proved. Even, his past record is not good but the Labour Court has considered that looking to his length of service and gravity of misconduct, denial of backwages of at least 10 years is sufficient punishment to the respondent workman. Afterall, it is discretionary order passed by the Labour Court. It is also pertinent to note one more fact that inspite of stay granted by this Court, the respondent workman has already been reinstated in service by the petitioner Corporation in the year 1993 and at present also, the respondent workman has been working, therefore, in the interest of justice, it would not just and proper for this Court to disturb reinstatement of the respondent workman who is already working for more than seven to

eight years with the Corporation from the date of award. Therefore, it is considered that the best course is to impose some punishment, so that the delinquent would realize continued effect of committing such misconduct till he retires. In light of above factual aspects of the matter and the fact that the respondent workman has been reinstated in service with the petitioner Corporation, according to my opinion, instead of disturbing the reinstatement, punishment of stoppage of five increments with permanent effect to the respondent workman, would suffice to meet the ends of justice.

#. In view of above discussion, present petition deserves to be partly allowed and the same is partly allowed accordingly. The award passed by the Labour Court, Godhara in Reference No.412 / 1990 dated 16th June, 1993 is modified to the effect that over and above, reinstatement granted by the Labour Court with continuity and without backwages, the respondent workman has to suffer punishment of stoppage of five increments with permanent effect accordingly. However, it is made clear that on account of punishment of stoppage of five increments with permanent effect as imposed by this Court, the petitioner Corporation will not effect any recovery from the past salary received by the respondent and similarly, the respondent workman will not claim any arrears because of the order passed by this Court.

Rule is made absolute to the extent indicated hereinabove. No order as to costs.

In view of the final order passed by this Court in Special Civil Application No.10979 / 1993, no order requires in Civil Application No.1044/1994 and same would stand disposed of accordingly.

Date : 21-2-2002 [H.K.Rathod, J.]

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